

"C & B Version"

PRIVILEGED AND CONFIDENTIAL
Draft -- July 22, 1981

Edward N. Brandt, Jr., M.D.
Assistant Secretary for Health
Public Health Service
Department of Health and Human
Services
Washington, D.C. 20201

Dear Doctor Brandt:

We are writing to follow up on our recent discussions of your request for a list of flavorings or additives commonly used in cigarettes manufactured in the United States by the major cigarette companies.

We appreciate the sensitivity you and other officials of the Department evidenced at our most recent meeting concerning the competitively sensitive nature of the information you have requested. The formulas for individual brands of cigarettes are, of course, highly guarded trade secrets. Disclosure of this information, even in some aggregate or composite form, could pose serious competitive difficulties for individual companies.

Moreover, premature and unwarranted publicity as to particular flavorings or additives continues to be a very real and legitimate concern. We are not aware of any substantial scientific evidence that the flavorings used in American cigarettes involve any hazard to health. Nevertheless, experience has shown that the dissemination of less than complete information as to particular flavorings or additives can confuse and unnecessarily alarm members of the public.

Despite these significant concerns, the major United States cigarette manufacturers remain willing to cooperate with the Department in this matter. To satisfy your expressed interest in obtaining additional information as to commonly used flavorings or additives, while attempting to accommodate some of the more pressing industry concerns, we propose the following procedures:

1. Each of the major cigarette manufacturers is prepared to provide to Covington & Burling, or to an accounting firm acceptable to the companies as well as to the Department, a list of flavorings or additives commonly used in cigarettes currently manufactured in the United States by that company. The lists

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would include any flavoring or additive used in more than a single brand of cigarette or, if used only in a single brand, used in an amount exceeding _____ per cigarette. The list would not include flavorings or additives in common use prior to 1965 in cigarettes manufactured in the United States.

2. After having received such lists, Covington & Burling or the designated accounting firm, as the case might be, would prepare a composite list. Such list would be prepared so as protect from disclosure the formulas for particular brands of cigarettes and, specifically, so as to prevent the matching or linking of individual flavorings or additives with particular brands of cigarettes or individual companies.
3. The composite list prepared by Covington & Burling or the designated accounting firm, as the case might be, would be made available in the offices of such firm to persons designated in the manner described in (4) below.
4. Access to the composite list would be limited to representatives or officials of the Department specifically designated by you, not exceeding _____ in number. The persons so designated would be persons within the Department having, as part of their official duties, the consideration on the Department's behalf of the matter of cigarette flavorings or additives. In addition, consultants under contract with the Department, not exceeding _____ in number, would be permitted access to the composite list so long as they agreed in writing to comply with the procedures described in (5) below. Persons entitled to access to the composite list would be permitted to make notes concerning the list but copying of the list, whether by hand or by mechanical duplicating facilities, would not be permitted.
5. Consultants to the Department, as described in (4) above, must agree in writing to respect the confidentiality of the composite list. Specifically, any such consultant must agree not to disclose to anyone not entitled to access to the composite list any of the substances included on the list

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or their conclusions, if any, concerning the list or any substance appearing on the list. Similar written instructions would be provided to representatives or officials of the Department designated pursuant to (4) above.

6. All reasonable steps are to be taken by the Department to protect from public disclosure the identity of any substance appearing on the composite list. These steps would include, at a minimum, the designation by you of a custodian, who shall take physical possession of any notes or other documents associated with or discussing substances appearing on the composite list. When not in actual use by a person authorized to have access to such materials, the custodian shall store the materials in a locked cabinet or file and shall be responsible for maintaining a complete record of any persons inspecting or using the materials.
7. The Department agrees that the notes and other documents described in (6) above, to the extent they might reveal the identity of substances on the composite list, are exempt from disclosure under the Freedom of Information Act ("FOIA") as containing privileged and confidential trade secrets. The Department will deny any request under the FOIA for access to such materials and will refuse to permit access except pursuant to court order. In the event the Department receives a request for access to such materials, it will promptly notify the various companies of the request and, in the event of litigation concerning the request, will interpose all appropriate defenses.

We are prepared to discuss with you, at your convenience, any of the procedures we have proposed, and to consider any different or additional procedures that might offer comparable protection.

Sincerely,

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